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JOHN J. COTA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN J. COTA,

Defendant.

Case No. CR 08-0160 SI

**DEFENDANT JOHN J. COTA'S REPLY
TO OPPOSITION TO MOTION TO
DISMISS FALSE STATEMENT
CHARGES**

Defendant John J. Cota ("Captain Cota"), by and through his undersigned counsel, hereby files this reply to the United States' Opposition ("Opposition") to Captain Cota's Motion to Dismiss False Statement Charges ("Motion").

I. INTRODUCTION.

The issue before the Court is whether it is proper for the government to charge Captain Cota with making false statements to a federal agency based on Captain Cota's interaction with a doctor who was authorized by the State to perform a medical examination in connection with his State Pilot's license. Captain Cota submits that it is not for the reasons set forth below.

As a threshold matter, the government's position is largely based on facts not stated in nor reasonably inferred from the Indictment, and such arguments must for this reason alone be rejected. Moreover, many of the government's factual assertions are not supported by any evidence in the Opposition itself nor by any materials provided to the defense in this matter, and are furthermore assertions which Captain Cota strongly contests as wrong, misleading or irrelevant.

II. DISMISSAL IS PROPER BECAUSE THE MEDICAL EXAMINATIONS AT ISSUE ARE A STATE, AND NOT A FEDERAL, MATTER.

A. Dr. Calza Was A State-Approved Medical Examiner.

The government's false statement claims boil down to a basic issue: are the conversations between Captain Cota and Dr. Calza during the 2006 and 2007 medical examinations a matter of federal jurisdiction? In its Opposition, the government attempts to characterize these conversations as examinations that are "jointly" state and federal. For example, the government states, without any support, that Dr. Calza "was a physician *authorized by the Coast Guard* and San Francisco Pilots Commission to administer annual merchant mariner physicals" and that "the only purpose of the examination was to satisfy the regulatory requirements *of the United States Coast Guard* and the State Board of Pilot Commissioners." Opposition at 4 (emphasis added).

The facts, however, demonstrate otherwise. Dr. Calza is a local San Francisco Bay area physician who was on the State Board's list of approved medical examiners. The Coast Guard even recognizes as much in its own investigative report regarding the COSCO BUSAN accident, describing Dr. Calza as a general physician who "conducts physicals for the San Francisco Bay Bar Pilots." See Motion (Docket #52), Exhibit A. There is no evidence or even an allegation that the Coast Guard maintains an authorized list of physicians or physicians' assistants, much less that Dr. Calza was on it. As such, Dr. Calza cannot fairly be described after the fact as a "federal" doctor.

1 **B. The Coast Guard Recognizes The State Board's Jurisdiction Over This**
 2 **Matter.**

3 In an effort to characterize the meetings between Captain Cota and Dr. Calza as a federal
 4 matter, the government points out that (i) Section 46 of the Code of Federal Regulations requires
 5 that pilots undergo annual medical examinations, and (ii) the law regarding false statements does
 6 not require that the federal government actually review and rely upon the false statements.
 7 Opposition at 8-11. The issue here, however, is not whether the Coast Guard has promulgated
 8 general, national regulations regarding pilot licensing. Rather, the issue is whether the Coast
 9 Guard has interpreted its regulatory authority to be limited, and to exclude pilotage jurisdiction
 10 of the San Francisco Bay. As noted in the Motion, pursuant to its formal Memorandum of
 11 Agreement (the "MOA") with the State of California, the Coast Guard acknowledged that the
 12 San Francisco Bay is effectively under the "pilotage jurisdiction" of the State Board.¹ Motion,
 13 Exhibit D, page 147. Nothing in the government's Opposition counters this plain but important
 14 fact.

15 The government argues that federal Coast Guard regulations requiring annual medical
 16 examinations as an example of its assertion of jurisdiction over this matter. The Coast Guard
 17 expressly recognized in the MOA, however, that the federal rules govern in the *absence* of state
 18 regulations. *See* Motion, Exhibit D, page 147. Thus, where the state has enacted specific
 19 legislation governing pilots, the state rules apply. In the MOA, the Coast Guard (i) specifically
 20 singled out San Francisco Bay as a territory already subject to detailed and comprehensive State
 21 legislation, and (ii) expressly recognized that San Francisco Bay falls under the "pilotage
 22 jurisdiction" of the State Board.

23 Thus, it is indisputable that for years the government has said it does not and will not
 24 exercise jurisdiction over San Francisco pilot medical examinations, but now, after an accident
 25 and perhaps even political pressure placed on the prosecutors, the government is seeking to
 26 reverse its position and threaten a five year jail term based on apparent miscommunications

27 _____
 28 ¹ While the government points out that the version of the MOA attached to Motion appears to be
 a draft, it does not contest that the MOA contains the cited language.

1 between a pilot and a state doctor. An agency may not change its view regarding what conduct it
 2 considers to be covered by its rules, and then charge a violation of that revised standard, thereby
 3 causing undue prejudice to a litigant who may have relied on the agency's prior policy or
 4 interpretation. *Ruangswang v. INS*, 591 F.2d 39, 43 (9th Cir.1978) (rejecting the government's
 5 attempt, in the course of litigation, to interpret its own regulation in a manner that was "plainly
 6 erroneous or inconsistent with the regulation"). Nor may it change its longstanding policies and
 7 practices for the convenience of its litigating position. *Bowen v. Georgetown University*
 8 *Hospital*, 488 U.S. 204, 213 (1988) ("[d]eference to what appears to be nothing more than an
 9 agency's convenient litigating position would be entirely inappropriate"). Rather, the
 10 government is bound by its own contemporaneous and longstanding interpretation of the
 11 jurisdictional limits of its own statute. *Red Lion Broad. Co., Inc. v. FCC*, 395 U.S. 367, 381
 12 (1969) ("the construction of a statute by those charged with its execution should be followed
 13 unless there are compelling indications that it is wrong"); *See also United States v. Jackson*,
 14 2007 U.S. Dist. LEXIS 29171, 7-8 (D. Idaho 2007) (finding that "[t]he doctrine of quasi-estoppel
 15 prevents a party from asserting a right, to the detriment of another party, which is inconsistent
 16 with a position previously taken"). The federal government knowingly entered into the MOA
 17 and should not now be allowed to ignore it purely in an attempt to meet the requirements of
 18 Section 1001. Accordingly, since Dr. Calza is a State Board approved physician, the
 19 examinations are a State matter and not a federal one.²

20 **III. EVEN IF THE MEDICAL EXAMINATIONS WERE DEEMED A FEDERAL**
 21 **MATTER, THE EXAMINATION PROCESS WAS SO AMBIGUOUS AND**
 22 **FATALLY FLAWED THAT IT VIOLATES DUE PROCESS TO USE THEM AS**
 23 **THE BASIS FOR A FALSE STATEMENT CLAIM.**

24 Even assuming, *arguendo*, that the communications between Captain Cota and Dr. Calza
 25 in 2006 and 2007 can be characterized as matters of federal jurisdiction, dismissal is still proper

26 ² Even the government appears to concede that the medical examinations in question are not
 27 material events given what it calls the lifetime tenure of San Francisco Bar Pilots: "The position
 28 of Pilot in San Francisco Bay is a life tenure appointment. **The only way to obtain the position**
is for a current Pilot to die or retire." *See* Opposition to Motion to Dismiss Clean Water Act
 Count at 12 (Docket # 63) (emphasis added).

1 since the examination process was so ambiguous and fatally flawed that it violates due process to
 2 use them as the basis for a false statement claim. *United States v. Manapat*, 928 F.2d 1097, 1101
 3 (11th Cir. 1991)(affirming dismissal of felony false statement claims on the ground that the
 4 medical form which allegedly gave rise to the false statements was ambiguous).

5 First, the Opposition completely ignores the fact that the federal government itself
 6 admitted that the federal medical examination program was fundamentally flawed. Among other
 7 things, the federal government found that (i) the Coast Guard does not provide guidance on the
 8 acceptable methods of meeting the [federal] requirements, (ii) the Coast Guard does not have any
 9 formal mechanism for being informed about a mariner who has a disqualifying physical
 10 condition, and (iii) the form at issue -- Form 719K -- does not apply to the exact event the
 11 government here tries to apply it to: namely, annual pilot medical evaluations.³ Motion, Exhibits
 12 E and F. This is not a situation in which a lone federal official has questioned in passing the
 13 adequacy of a given form or process. Rather, a formal Federal Advisory Committee has been
 14 established to address the problems associated with the use of this form.⁴ Simply put, the
 15 government should not be permitted to charge Captain Cota with failing to meet federal medical
 16 examination requirements when, as conceded by the federal government itself, no one knows
 17 what this form requires, nor how to complete it. Nor should Captain Cota be even exposed to jail
 18 time of up to five years based on an examination program lacking any "formal mechanism" for
 19 working effectively.⁵

21 ³ This comports with 46 C.F.R. § 10.205(d) which does not require that examining physicians
 22 use Form 719K, merely "a Coast Guard physical examination form, or its equivalent" (emphasis
 added).

23 ⁴ See Motion, Exhibit Q (MERPAC Task Statements 46 and 61), stating, among other things,
 24 that the Coast Guard's "regulatory cites are generally vague, often causing confusion among the
 25 RECs and mariners," that the "source documents for medical guidelines are generally vague,"
 and that "[n]either STCW nor the regulations in 46 CFR contain any standards, with the
 exception of visual acuity and color vision, for determining whether a mariner is physically
 26 qualified."

27 ⁵ This also undermines the government's argument that the alleged false statements were
 28 material. While it is plainly important for medical examinations to be accurately performed, the
 test for determining materiality is whether an alleged false statement "had the intrinsic capability
 of influencing or affecting" federal decision-making in a significant way. See *United States v.*
Facchini, 874 F.2d 638, 641 (9th Cir. 1989). The federal government's own frank assessment of
 5.

1 The government may argue that the Coast Guard corrected these deficiencies by requiring
2 pilots to submit their most recent medical examination results as of April 11, 2007 to the Coast
3 Guard. Without acknowledging that this change in regulation fixed the problems, there can be
4 no dispute that it had no affect on the 2006 examination (since the 2007 examination was
5 Captain Cota's most recent physical examination). Any attempt to retroactively apply this
6 change in regulation to cover the 2006 examination would plainly violate the *Ex Post Facto*
7 Clause, as set forth in greater length in the Motion. Motion at 15-16.

8 The government, however, claims that there are no *ex post facto* implications in the new
9 regulation because up until the new regulation became effective in April 2007, federal law
10 already required a pilot to obtain an annual physical. Opposition at 10. In this case, the physical
11 examination performed by Dr. Calza for the State Board satisfied the federal requirement as
12 well.⁶ What the government fails to address, however, is that only as of April 2007 did the
13 government advise anyone that it would play an active role in overseeing these mariner physical
14 exams. That is a qualitative difference that does raise *ex post facto* questions. The real issue
15 here is that the government disagrees with Dr. Calza's conclusion that Captain Cota was "fit for
16 duty" based on the examinations he performed in 2006 and 2007. That type of after-the-fact
17 second guessing before there is notice to an affected person of the federal governmental intent
18 and authority is what the *Ex Post Facto* Clause protects against.

19
20
21 the ineffectiveness of the medical examination program precludes any finding that Captain
22 Cota's brief conversations with Dr. Calza were intrinsically capable of significantly affecting
23 government action. The government's materiality argument is further weakened by the fact that
24 as a result of the 2006 and 2007 examinations, Dr. Calza learned that Captain Cota had sleep
25 apnea, for which he was prescribed Provigil, and that he was prescribed pain medications and
26 other medications that were anti-depressant / anti-anxiety in classification. Despite the
27 government's claim that Dr. Calza "had concerns" about this information, the only action he
28 allegedly took was to advise Captain Cota not to take these medications within 24 hours of
working. Opposition at 13. Such a warning, even assuming it was given, does not constitute a
"significant" impact on federal decision-making, as required by law, especially where Dr. Calza
made no record of having provided such warning on Form 719K or in any other medical records
he maintained or any he provided to Captain Cota.

⁶ Once every five years, a pilot needs to renew his federal license and, at that time provide proof
of his annual physicals. 46 C.F.R. § 10.202(b). Captain Cota last renewed his federal license in
2005 and did not have to renew it again until 2010.

1 Second, the Opposition does not address the fact that the federal government has
 2 convened a federal committee (MERPAC) to review the federal examination program and,
 3 specifically, to revise the very form used during Captain Cota's examinations, Form 719K. In its
 4 Opposition, the government focuses much of its effort on reciting general law regarding whether
 5 criminal statutes provide sufficient notice of the offense. The issue here is much more specific:
 6 were the questions and/or inquiry which gave rise to Captain Cota's alleged false statements,
 7 including those on Form 719K, ambiguous? This issue is particularly important since the
 8 government seeks to imprison Captain Cota based on the manner in which Form 719K was
 9 completed by Dr. Calza. At the very least, as set forth in the Motion, the government is required
 10 to establish that the inquiries giving rise to the alleged false statements are clear and free from
 11 ambiguity. *United States v. Manapat*, 928 F.2d 1097, 1101 (11th Cir. 1991)(discussed in Motion
 12 at 18-20).

13 The ongoing debate over and revisions to Form 719K focus on the specific sections at
 14 issue here and demonstrate that these inquiries were ambiguous and ineffective. For example, in
 15 its most recent revisions to Form 719K, attached hereto as Exhibit S, MERPAC finally clarifies
 16 the time period covered by the request for information, requiring applicants to list medications
 17 prescribed or taken "within 30 days prior to the date the applicant" signs the form.⁷ MERPAC
 18 specifically removed the word "current" before "medication" (*See* section titled "Applicant
 19 Information," page 1), noting in its comments that such language should be reviewed "in light of
 20 COSCO BUSAN case, i.e. what does 'current' medications mean?" This is compelling evidence
 21 of the form's ambiguity on a key provision. The revised form also squarely acknowledges the
 22 duty of the examining physician to obtain complete information: "[v]erification of
 23 medications...includes questioning the applicant about any medications or other substances
 24 _____

25 ⁷ In the Opposition, and without support, the government claims that Dr. Calza's "questions"
 26 applied to the entire previous year, which, ironically, covers a different and much longer time
 27 period than that set forth in the revised Form 719K. Opposition at 16, fn 14. This again shows
 28 the inherent ambiguity of the examination process, which is obviously dependent on the kinds of
 questions asked, the mariner's ability to understand them and respond adequately, and the
 doctor's decision about what to report.

1 reported, reviewing relevant medical conditions to determine if the applicant has omitted any
2 medications or other substances, and affirmatively reporting any omitted current medications or
3 other substances where required.” See Exhibit S hereto (page 2). This revision demonstrates
4 that (i) the requirements of this section of the form were not clearly understood nor easily met by
5 applicants, and (ii) the process of gathering sufficient medical information is interactive, with the
6 physician being primarily responsible for clarifying any ambiguities and probing into the
7 information provided.

8 This latter revision is particularly important: Dr. Calza’s examinations of Captain Cota in
9 both 2006 and 2007 were brief, cursory, focused largely on motor/vision tests and far from
10 “interactive.” In fact, despite the government’s claim that Dr. Calza “had concerns” about the
11 information he obtained from Captain Cota during the examinations, Dr. Calza did not articulate
12 or record these concerns in any medical record he maintained nor did he provide anything to
13 Captain Cota identifying his concerns. The evidence will demonstrate that Dr. Calza failed to
14 ask follow up questions, did not conduct any further evaluation or testing, did not review any of
15 Captain Cota’s medical records, did not consult with Captain Cota’s prescribing physicians and
16 did not do any research or obtain any second opinions. Captain Cota should not be held
17 criminally liable for Dr. Calza’s failure to properly conduct the examinations or to record his
18 alleged concerns.

19 In its Opposition, the government claims that in 2007 Captain Cota “continued to conceal
20 all of the medications he was taking and significantly minimized certain highly relevant and
21 newly disclosed medications.” Opposition at 6. Apart from the failure of the Indictment to even
22 hint at such “continuation,” Captain Cota in fact disclosed his sleep apnea and his prescription
23 for Provigil, his prescriptions for a variety of pain medications, including one drug the
24 government labeled as a “serious pain medication” (Opposition at 5), as well as other drugs he
25 had been prescribed. These disclosures were qualitatively different from the prescriptions
26 recorded by Dr. Calza in 2006 and yet there is no record of Dr. Calza doing or saying anything in
27 response. Further, while the government repeatedly tries to infer that Captain Cota had a motive
28

1 to lie, conceal or minimize his responses because he was in danger of losing his high paying job,
2 the truth is that if he was medically disabled he would have been able to retire with a disability
3 retirement pension that would have resulted in a much more significant, tax free income than he
4 is likely to obtain otherwise.⁸

5 Finally, neither Dr. Calza nor Form 719K provided Captain Cota with any notice that his
6 discussions with Dr. Calza were subject to the sanctions of Section 1001. The federal
7 government obviously considers this a significant omission, as the revisions to Form 719K now
8 contain an express warning where none existed before.

9 **IV. CONCLUSION.**

10 The simple fact is that the medical examinations at issue were conducted pursuant to the
11 State Board's licensing authority and not the Coast Guard's. Further, even assuming arguendo
12 that the Coast Guard is determined to exercise regulatory oversight and authority over these
13 examinations, there are fundamental problems with the existing federal process and in particular,
14 with the questions on Form 719K and the manner in which the form is completed by the
15 examining physician. This has resulted in a formal, on-going government sponsored effort to
16 address and correct these ambiguities and deficiencies in order to provide fair notice regarding
17 the examination requirements, including the penalties for non-compliance.

18 Thus, even the government must acknowledge that the problems inherent in the current
19 examination process raise serious due process concerns and, one assumes, that is why it is
20 working diligently to address and correct those issues. It is fundamentally unfair to prosecute

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28 ⁸ The government repeatedly exaggerates the salary Captain Cota earned and the financial
consequences if he lost his job due to medical reasons in any event.

1 Captain Cota under these circumstances. The false statement charges should therefore be
2 dismissed.

3 Respectfully submitted,

4
5 K& L GATES LLP

6
7 Dated: July 11, 2008

By: /s/ Jeffrey L. Bornstein
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Luke G. Anderson, Esq.
Barry M. Hartman, Esq., *Admitted Pro Hac Vice*
Christopher R. Tate, Esq., *Admitted Pro Hac Vice*

10 Attorneys for Defendant
11 JOHN J. COTA
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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California by a member of the Bar of this Court, at whose direction this service was made. I am over the age of 18 and not a party to the within action. My business address is 55 Second Street, Suite 1700, San Francisco, CA 94105. On July 11, 2008, I served the document(s) described as:

DEFENDANT JOHN J. COTA'S REPLY TO OPPOSITION TO MOTION TO DISMISS
FALSE STATEMENT CHARGES
on the parties to this action named on the attached service list by the method described below.

(BY PERSONAL SERVICE) I caused a true and correct copy of said document(s) to be served by hand to the addressee(s) listed above, with the name and address of the person served shown on the envelope.

(BY OVERNIGHT DELIVERY) I enclosed a true and correct copy of said document(s) in an envelope/package provided by an overnight delivery carrier addressed to the addressee(s) listed above, sealed it, and placed it for collection and overnight delivery following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for overnight delivery. On the same day that correspondence is placed for collection and overnight delivery, it is collected by an overnight delivery carrier. Delivery fees are pre-paid or provided for in accordance with the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP.

X (BY ELECTRONIC TRANSMISSION) I transmitted a true and correct copy of said document(s) by electronic mail to the offices of the addressee(s). I did not receive, within a reasonable time after the transmission, any message or other indication that the transmission was unsuccessful.

(BY FACSIMILE) I transmitted a true and correct copy of said document(s) by facsimile to the offices of the addressee(s). Upon completion of the facsimile transmission, a transmission report was issued showing the transmission was complete and without error.

(BY U.S. MAIL) I enclosed a true and correct copy of said document(s) in an envelope addressed to the addressee(s) listed above and placed it for collection and mailing following the ordinary business practices of Kirkpatrick & Lockhart Preston Gates Ellis LLP. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service with postage fully prepaid at San Francisco, California.

Executed on July 11, 2008 at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Mae A. Chu
Mae A. Chu

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EXHIBIT S

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 1
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- Detailed guidance on the medical and physical evaluation guidelines for merchant mariner credentials is contained in Navigational and Vessel Inspection Circular (NVIC) XX-08.
- Additional information is also available at the National Maritime Center (NMC) Homeport website at: <http://homeport.uscg.mil/mmcmmedical>
- Additional information can also be obtained from NMC at: [insert NMC address and phone number].

Who must submit this form?

- Applicants seeking an original, renewal or raise-in-grade credential are required to complete this form or its equivalent, containing the same information, and submit it to the U.S. Coast Guard.
- Guidance for who is required to submit this form is contained in Enclosure (1) of NVIC XX-08.

Applicant Information

- Applicants are required to provide the applicant information in section I, and to report all applicable medications, known physical impairments and medical conditions in sections IIa and IIb at the time this form is signed by the applicant.
- Applicants are required to sign and date the certification in section VIII of this form attesting, subject to criminal prosecution under 18 USC § 1001, that all information reported is true and correct to the best of their knowledge and that they have not knowingly omitted or falsified any material information relevant to this form.
- Applicants must also complete the release in section X of this form.

Instructions for Providing Proof of Identity

- Applicants** shall present acceptable proof of identity to the medical practitioner conducting examinations.
- Medical practitioners** must verify the identity of applicants before conducting examinations.
- Proof of identity shall consist of one current form of valid government issued photo identification.

The following credentials are acceptable proof of identity: (check NVIC XX-08 for complete list)

Unexpired official identification issued by a federal, State, or local government or by a territory or possession of the United States, such as a TWIC, passport, U.S. driver's license, U.S. military ID card or MMD/MMC.

General Instructions for Medical Practitioner

- The Coast Guard requires a physical examination and certification be completed to ensure that mariners:
 - Are of sound health.
 - Have no physical limitations that would hinder or prevent performance of duties (see below).
 - Are free from any medical conditions that pose a risk of sudden incapacitation, which would affect operating, or working on vessels.
- All examinations, tests and demonstrations must be performed, witnessed or reviewed by a physician (MD or DO) or nurse practitioner or a certified physician assistant licensed by a State in the U.S., a U.S. possession, or a U.S. territory. The verifying medical practitioner must complete sections III, IV, V, VI, VII & IX of this form.
- Detailed guidelines on potentially disqualifying medical conditions are contained in NVIC XX-08. Medical practitioners should be familiar with the guidelines contained within this document. NVIC XX-08 may be obtained from <http://www.uscg.mil/hq/g-m/index/> or by calling the nearest USCG Regional Examination Center, or the National Maritime Center (<http://homeport.uscg.mil/mmcmmedical>) at 1-888-IASKNMC (1-888-427-5662).

Comment [dad1]: MERPAC Medical WG recommends that we continue to use the CG-719K/E as is, only modified to account for the changes to encl (2) that MERPAC recommends, i.e. the 719K/E should be consistent w/ the new encl (2). The K/E should also have a BMI block on it.

Comment [dad2]: MERPAC Medical WG agrees to work on this version of the 719K. The group will edit this version for content and format and take it up before the next meeting.

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Comment [DAD3]: MERPAC & TSAC both want to review this language in light of COSCO BUSAN case, i.e. what does "current" medications mean?

Comment [dad4]: WG recommends adding a brief discussion about the NMC centralized process here, e.g. the doctor is a data collector who simply reports the info to the Coast Guard, or the doctor makes a recommendation as to fitness for duty, etc.

Comment [dad5]: District of Colombia?

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 2
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4. Verification of medications in section II(a) of this form includes questioning the applicant about any medications or other substances reported, reviewing relevant medical conditions to determine if the applicant has omitted any medications or other substances, and affirmatively reporting any omitted current medications or other substances where required.

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General Instructions for Medical Practitioner Continued

5. All applicants who require a general medical examination must be physically examined by the verifying medical practitioner.
6. The verifying medical practitioner is not required to perform or witness every examination, test or demonstration. These may be referred to other qualified practitioners; however, they must be reviewed to the satisfaction of the verifying medical practitioner. The last page of this form contains a certification that the general medical examination, vision and hearing tests, as well as the physical demonstration of competence as appropriate, have been performed, witnessed or reviewed to the satisfaction of the verifying medical practitioner. Applicants who are required to complete a general medical examination are also required to complete vision tests, and they may be required to complete hearing tests and/or demonstrations of physical competence as appropriate. The verifying medical practitioner must sign and date the certification where indicated. This signature attests, subject to criminal prosecution under 18 USC § 1001, that all information reported by the verifying medical practitioner is true and correct to the best of his/her knowledge and that the verifying medical practitioner has not knowingly omitted or falsified any material information relevant to this form.
7. If the verifying medical practitioner is unable to determine the applicant's physical ability, the applicant should be referred to another healthcare provider who can properly evaluate and test physical abilities.

Deleted: Medical examinations based solely on patient history review, and/or documentary review, are unacceptable.

Privacy Act Statement

As required by Title 5 United States Code (U.S.C) 552a(e)(3), the following information is provided when supplying personal information to the United States Coast Guard.

1. Authority for solicitation of the information: 46 U.S.C. 2104(a), 7101(c)-(e), 7306(a)(4), 7313(c)(3), 7317(a), 8703(b), 9102(a)(5).
2. Principal purposes for which information is used:
 - a. To determine if an applicant is physically capable of performing their duties.
 - b. To ensure that a duly licensed Physician (MD or DO) / Physician Assistant / Nurse Practitioner conducts the applicant's physical examination/certification and to verify the information as needed.
3. The routine uses which may be made of this information:

This form becomes a part of the applicant's file as documentary evidence that regulatory physical requirements have been satisfied and that the applicant is physically competent to hold a credential.

 - a. The information becomes part of the total credential file and is subject to review by Federal agency casualty investigators.
 - b. This information may be used by the United States Coast Guard and an Administrative Law Judge in determining causation of marine casualties and appropriate suspension and revocation action.
4. Disclosure of this information is voluntary, but failure to provide this information will result in non-issuance of a credential.

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An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The United States Coast Guard estimates that the average burden for completing this form is XX minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to the Commandant (G-CIM) United States Coast Guard, 2100 2nd Street SW, Washington, DC 20593-0001

... [1]

Section I - Application Information

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 3
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Last Name:	First Name:	Middle Name:	Suffix:
Age:	Date of Birth (MM/DD/YYYY):	Social Security Number:	

Comment [DAD6]: What about an e-mail address for the applicant?

Comment [DAD7]: Can we legally ask for SSN on this form?

Section II(a) - Medications (must be completed by verifying medical practitioner)

Credential applicants who are required to complete a general medical exam are required to disclose all prescription medications prescribed and/or taken, and all non-prescription (over-the-counter) medications taken, including dietary supplements and vitamins taken, within 30 days prior to the date that the applicant signs the CG-719K or approved equivalent form, to the verifying medical practitioner who signs the CG-719K or approved equivalent form.

The verifying medical practitioner who signs the CG-719K or approved equivalent form must report all medications (prescription and non-prescription) and dietary supplements and vitamins with reasonable risk of potential side effects that might impact their ability to safely carry out their duties to the Coast Guard on the CG-719K or approved equivalent form.

Include dosages of every substance reported on this form, as well as the condition for which each substance is taken.

Additional sheets may be added by the applicant and/or qualified medical practitioner if needed to complete this section (include applicant name and DOB on each additional sheet).

If none, check "NONE."

☐ NONE

Deleted: applicant and reviewed by

Comment [DAD8]: This language needs to be further, and carefully, reviewed by MERPAC & TSAC for a final recommendation, especially in light of the COSCO BUSAN pilot's current dealings w/ the US attorney.

According to Mr. McGovern, the pilot apparently failed to disclose two prescription medications, and the US attorney is seeking 10 years imprisonment (5 years for each omission) for this offense.

We also need CG legal to look at the definition of "current" in this context - what does that mean?

Deleted: Applicants are required to report all active, daily or as-needed prescription medications, and all current non-prescription (over-the-counter) medications, including dietary supplements and vitamins, at the time the applicant signs this form.

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Deleted: The information reported by the applicant must be verified by the verifying medical practitioner, or by any other qualified medical practitioner to the satisfaction of the verifying medical practitioner. This includes assisting the applicant in reporting dosages and the condition(s) for which he/she takes each substance.

Deleted: Applicant must list all current medications (prescription and non-prescription) including dosage and the condition(s) for which the medication(s) are taken.

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Section II(b) - Certification of Medical Conditions (must be completed by applicant and reviewed by verifying medical practitioner)

Applicants must report their relevant medical conditions to the best of their knowledge, and the verifying medical practitioner must verify the medical conditions, using the table below. Check "yes" if the applicant has had a previous diagnosis or treatment of the condition by a healthcare provider, or if the applicant is currently under treatment or observation for the condition, or if the condition is present regardless of treatment.

If the verifying medical practitioner, or any other health care provider to the satisfaction of the verifying medical practitioner, discovers a condition not reported by the applicant, he/she must check "yes" in the appropriate block and explain in the remarks.

The verifying medical practitioner must address all reported relevant conditions in detail in Section VII. This detailed explanation should include, at a minimum, identification of the condition, approximate date of diagnosis, any limitations, whether the condition is controlled, the prognosis and any additional information as appropriate, referring to the evaluation data listed in enclosure (3) of NVIC XX-08 for each condition.

Additional sheets may be added by the applicant and/or verifying medical practitioner if needed to complete this section of the form.

To the best of the applicant's knowledge, does the applicant have, or have ever suffered from, any of the following?

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 4
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If YES, the applicant must **PROVIDE THE TEST RESULTS AND/OR RECORDS AS INDICATED**, referring to the evaluation data listed in enclosure (3) of NVIC XX-08 for each condition. Documentation of evaluation data specified in this table for all applicable medical conditions potentially requiring further review should be submitted with each application, unless otherwise specified by the NMC. Mariners, including first class pilots and those individuals "serving as" pilots (as well as Great Lakes pilots) who are required to submit annual physical examinations to the Coast Guard, may be issued a letter by the NMC specifying the extent of the evaluation data, if any, that should be submitted to the Coast Guard for any medical conditions that have been previously reported to, and evaluated by, the NMC.

YES	NO		YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	1. Ear surgery,	<input type="checkbox"/>	<input type="checkbox"/>	47. Back surgery or injury
<input type="checkbox"/>	<input type="checkbox"/>	2. Hearing loss, hearing aid	<input type="checkbox"/>	<input type="checkbox"/>	48. Ruptured/herniated disc
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	49. Fractures requiring surgery
<input type="checkbox"/>	<input type="checkbox"/>	3. Impaired speech or stuttering	<input type="checkbox"/>	<input type="checkbox"/>	50. Limitation of any major joint
<input type="checkbox"/>	<input type="checkbox"/>	4. Deformities of face	<input type="checkbox"/>	<input type="checkbox"/>	51. Bone or joint surgery
<input type="checkbox"/>	<input type="checkbox"/>	5. Open tracheostomy	<input type="checkbox"/>	<input type="checkbox"/>	52. Dislocated joint
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	53. Recurrent neck or back pain
<input type="checkbox"/>	<input type="checkbox"/>	6. Poor vision	<input type="checkbox"/>	<input type="checkbox"/>	54. Swollen or painful joint
<input type="checkbox"/>	<input type="checkbox"/>	7. History of eye disease or injury	<input type="checkbox"/>	<input type="checkbox"/>	55. Arthritis or bursitis
<input type="checkbox"/>	<input type="checkbox"/>	8. History of eye surgery	<input type="checkbox"/>	<input type="checkbox"/>	56. Trick or locked knee
<input type="checkbox"/>	<input type="checkbox"/>	9. Abnormal color vision	<input type="checkbox"/>	<input type="checkbox"/>	57. Amputation or prosthesis
<input type="checkbox"/>	<input type="checkbox"/>	10. Glaucoma	<input type="checkbox"/>	<input type="checkbox"/>	58. Carpal tunnel
<input type="checkbox"/>	<input type="checkbox"/>	11. Asthma	<input type="checkbox"/>	<input type="checkbox"/>	59. Difficulty walking or climbing
<input type="checkbox"/>	<input type="checkbox"/>	12. Emphysema or COPD	<input type="checkbox"/>	<input type="checkbox"/>	60. Sciatica or nerve pain
<input type="checkbox"/>	<input type="checkbox"/>	13. Collapsed lung/pneumothorax	<input type="checkbox"/>	<input type="checkbox"/>	61. Other bone/joint disorder
<input type="checkbox"/>	<input type="checkbox"/>	14. Irregular heart beat	<input type="checkbox"/>	<input type="checkbox"/>	62. Motion/sea sickness
<input type="checkbox"/>	<input type="checkbox"/>	15. Heart murmur or valve replacement	<input type="checkbox"/>	<input type="checkbox"/>	63. Impaired balance, or balance disorder or difficulty
<input type="checkbox"/>	<input type="checkbox"/>	16. Chest pain or angina	<input type="checkbox"/>	<input type="checkbox"/>	64. Vertigo or dizziness
<input type="checkbox"/>	<input type="checkbox"/>	17. Heart attack/ myocardial infarction	<input type="checkbox"/>	<input type="checkbox"/>	65. Numbness or paralysis
<input type="checkbox"/>	<input type="checkbox"/>	18. Congestive heart failure	<input type="checkbox"/>	<input type="checkbox"/>	66. Head injury or skull fracture
<input type="checkbox"/>	<input type="checkbox"/>	19. Heart surgery/stent/angioplasty	<input type="checkbox"/>	<input type="checkbox"/>	67. Seizures or epilepsy
<input type="checkbox"/>	<input type="checkbox"/>	20. Pacemaker or defibrillator	<input type="checkbox"/>	<input type="checkbox"/>	68. Recurrent headaches
<input type="checkbox"/>	<input type="checkbox"/>	21. Any other heart condition	<input type="checkbox"/>	<input type="checkbox"/>	69. Narcolepsy
<input type="checkbox"/>	<input type="checkbox"/>	22. High blood pressure/hypertension	<input type="checkbox"/>	<input type="checkbox"/>	70. Sleep apnea
<input type="checkbox"/>	<input type="checkbox"/>	23. Aneurysm or blockages	<input type="checkbox"/>	<input type="checkbox"/>	71. Restless leg
<input type="checkbox"/>	<input type="checkbox"/>	24. Pulmonary embolus or blood clots	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	25. Gastrointestinal bleeding or ulcers	<input type="checkbox"/>	<input type="checkbox"/>	72. Fainting spells or loss of consciousness
<input type="checkbox"/>	<input type="checkbox"/>	26. Crohn's disease or ulcerative colitis	<input type="checkbox"/>	<input type="checkbox"/>	73. Stroke or TIA
<input type="checkbox"/>	<input type="checkbox"/>	27. Hepatitis or jaundice	<input type="checkbox"/>	<input type="checkbox"/>	74. Brain tumor
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	75. Other brain or nerve disease
<input type="checkbox"/>	<input type="checkbox"/>	28. Gallbladder problems or stones	<input type="checkbox"/>	<input type="checkbox"/>	76. ADD, ADHD, or bipolar
<input type="checkbox"/>	<input type="checkbox"/>	29. Intestinal surgery	<input type="checkbox"/>	<input type="checkbox"/>	77. Depression
<input type="checkbox"/>	<input type="checkbox"/>	30. Any form of cancer	<input type="checkbox"/>	<input type="checkbox"/>	78. History of suicide attempt
<input type="checkbox"/>	<input type="checkbox"/>	31. Anemia	<input type="checkbox"/>	<input type="checkbox"/>	79. Schizophrenia
<input type="checkbox"/>	<input type="checkbox"/>	32. Hemophilia or polycythemia	<input type="checkbox"/>	<input type="checkbox"/>	80. Anxiety
<input type="checkbox"/>	<input type="checkbox"/>	33. Any other blood disorders	<input type="checkbox"/>	<input type="checkbox"/>	81. Alcohol or substance abuse
<input type="checkbox"/>	<input type="checkbox"/>	34. Thyroid disease	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	35. Diabetes	<input type="checkbox"/>	<input type="checkbox"/>	82. Loss of memory or amnesia
<input type="checkbox"/>	<input type="checkbox"/>	36. HIV or AIDS	<input type="checkbox"/>	<input type="checkbox"/>	83. Other psychiatric disease or counseling
<input type="checkbox"/>	<input type="checkbox"/>	37. Lymphoma or leukemia	<input type="checkbox"/>	<input type="checkbox"/>	84. Sleepwalking
<input type="checkbox"/>	<input type="checkbox"/>	38. Tuberculosis	<input type="checkbox"/>	<input type="checkbox"/>	85. Bedwetting since age 12
<input type="checkbox"/>	<input type="checkbox"/>	39. Neurofibromatosis	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	40. Skin tumors or cancer	<input type="checkbox"/>	<input type="checkbox"/>	86. Sex change
<input type="checkbox"/>	<input type="checkbox"/>	41. Scleroderma	<input type="checkbox"/>	<input type="checkbox"/>	87. Allergic reactions
<input type="checkbox"/>	<input type="checkbox"/>	42. Lupus	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	43. Kidney transplant or dialysis	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	44. Kidney disease or cancer	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	45. Kidney stones	<input type="checkbox"/>	<input type="checkbox"/>	88. Any other disease, surgery or hospitalization
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	46. Protein/sugar/blood in urine	<input type="checkbox"/>	<input type="checkbox"/>	

Comment [G9]: Can we legally ask this (see ADA)?

Should this be deleted b/c it would already be covered elsewhere?

08 April 08 – MERPAC recommends deleting this block.

Deleted: 88.

Deleted: Medical disability

Deleted: 9

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Deleted: 8 a

Deleted: nothing has

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1. Identify the Condition	3. Is Condition Controlled?	5. Prognosis
2. List Any Limitations	4. Approximate Date of Diagnosis	6. Additional Information

Comment [t10]: MERPAC recommends listing condition # and corresponding comment in this block.

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<u>Condition</u>	<u>Comment</u>
#	

This section must be completed by the verifying medical practitioner, or any other healthcare provider to the satisfaction of the verifying medical practitioner. Additional information must be reported in Section VII. If corrective lenses are required to meet the standard, both corrected and uncorrected vision must be tested.

Distant Uncorrected	Distant Corrected To	Field of Vision
Right: 20 /	Right: 20 /	This applicant must have a 100 degree horizontal field of vision.
Left: 20 /	Left: 20 /	
		<input type="checkbox"/> Normal <input type="checkbox"/> Abnormal

The following color sense testing methodologies are acceptable:

- ☐ AOC (1965) – (6 or fewer errors on plates 1-15)
- ☐ AOC-HRR (2nd Edition) – (No errors in test plates 7-11)
- ☐ Richmond (1983) – (6 or fewer errors)
- ☐ Ishihara pseudoisochromatic plates test, 14 plate (5 or less errors), 24 plate (6 or less errors) 38 plate (8 or less errors)

- ☐ Titmus Vision Tester / OPTEC 2000 – (No errors on six plates)
- ☐ Farnsworth Lantern (colored lights) Test per instruction booklet.
- ☐ Optec 900 (colored lights) Test per instruction booklet.
- ☐ An alternative test approved by the Coast Guard (indicate test) _____

The verifying medical practitioner must indicate test used and results (number of errors). Additional information must be reported in Section VII. Color sensing lenses (e.g. X-Chrome) are prohibited.

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 6
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Color Vision: Normal Color Vision ☐ Abnormal Color Vision ☐

Section IV – Hearing

- ☐ Normal Hearing ☐ Abnormal Hearing ☐ Hearing Aid Required
☐ If abnormal hearing or hearing aid required, perform audiogram or functional speech discrimination test.

An applicant with normal hearing does not need to complete either the audiometer test or the functional speech discrimination test. The verifying medical practitioner, in consultation with any other healthcare provider he/she deems appropriate, determines whether the audiometer and/or functional speech discrimination test are necessary. If hearing is abnormal or hearing aid is required, refer to enclosure (5) of NVIC XX-08 for guidance.

If audiometric testing is required, the audiometer test should include testing at the following thresholds, 500Hz, 1,000Hz, 2,000Hz and 3,000 Hz. The frequency responses for each ear are averaged to determine the measure of an applicant's hearing ability. Applicant should demonstrate an unaided threshold of 30db or less in each ear.

Additional information must be reported in Section VII.

Audiometer Threshold Value		500Hz	1,000Hz	2,000Hz	3,000Hz			
	Right Ear (Unaided)							
	Left Ear (Unaided)							
	Right Ear (Aided)							
	Left Ear (Aided)							
Functional Speech Discrimination Test @ 55dB		Right Ear (Unaided):		%	Right Ear (Aided):	%		
		Left Ear (Unaided):		%	Left Ear (Aided):	%		

Section V(a). - Physical Information

This section to be completed by the verifying medical practitioner, or other medical staff to the satisfaction of the verifying medical practitioner. Additional information must be reported in Section VII.

Height (inches only):	Weight (lbs):	Body Mass Index (BMI):	Sex: Male <input type="checkbox"/> Female <input type="checkbox"/>
Pulse Resting:	Initial Blood Pressure:	Repeat Blood Pressure (if needed):	

Section V(b) – Physical Exam (must be completed by verifying medical practitioner)

#	Normal	Abnormal	System / Organ	#	Normal	Abnormal	System / Organ
1.			Head, Face, Neck, Scalp	10.			Skin
2.			Eyes / Pupils / EOM	11.			Lymphatics
3.			Mouth And Throat	12.			Neurologic
4.			Ears / Drums	13.			Vascular System
5.			Lungs And Chest	14.			Genital-Urinary System
6.			Heart	15.			Hernia

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 7
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7.		Abdomen	16.		Missing extremities / Digits
8.		Upper / Lower Extremities	17.		General / Systemic
9.		Spine / Musculoskeletal			

Please make numbered comments on positive answers above:

Section VI - Demonstration of Physical Ability (to be completed by the verifying medical practitioner)	
▶	If the applicant has a Body Mass Index (BMI) of 40.0 or higher, or if the verifying medical practitioner doubts the applicant's ability to successfully perform any of the following functions, a suitable practical demonstration is required for those functions. The verifying medical practitioner, in consultation with any other qualified practitioners he/she deems appropriate, determines whether a practical demonstration is necessary, and whether the applicant is physically competent or not physically competent.
▶	All practical demonstrations, if required, should be performed by the applicant without assistance. Any prosthesis normally worn by the applicant, and other aid devices, may be used by the applicant in all practical demonstrations except when the use of such items would prevent the proper wearing of mandated personal protection equipment (PPE).
▶	If the verifying medical practitioner is unable to conduct the practical demonstration, the applicant should be referred to a competent evaluator of physical ability. The Coast Guard recognizes that all medical practitioners may not have the equipment necessary to test all of the tasks as listed. Equivalent alternate testing methodologies may be used. For further information, see enclosure (2) of NVIC XX-08.
▶	If the applicant is unable to perform any of the following functions, the examining practitioner should provide information on the degree or the severity of the applicant's inability to meet the standards. The results of any practical demonstration or attendant physical evaluation should be recorded in the Section VII.
List of tasks considered necessary for performing ordinary and emergency response shipboard functions:	
1.	Is able to maintain a sense of balance without disturbance while walking and standing
2.	Is able to climb up and down vertical ladders and stairways
3.	Is able to step over a door sill or coaming up to 24 inches in height
4.	Is able to move through a restricted opening of 24 inches by 24 inches
5.	Is able to open and close watertight doors that weigh up to 55 pounds. Must be able to move hands/arms in vertical and horizontal directions, rotate wrists and reach above shoulder height to turn handles
6.	Is able to lift at least a 40 pound load off the ground, and to carry, push, or pull the same load
7.	Is able to grasp and manipulate common tools such as wrenches, hammers, screwdrivers and pliers
8.	Is able to crouch, kneel and crawl

Comment [DAD11]: WG recommends having separate instruction pages (i.e. the list of physical abilities) that are detachable from the form itself, so that fewer pages need to be turned into the CG.

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 8
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9. Is able to distinguish differences in texture and temperature by feel
10. Is able to intermittently stand on feet for up to four hours with minimal rest periods
11. Is able to react to visual alarms and instructions
12. Is able to react to audible alarms and instructions
13. Is capable of normal conversation
14. Is able to pull an uncharged 1.5-inch diameter, 50' fire hose with nozzle to full extension, and to lift a charged 1.5-inch diameter fire hose to firefighting position
15. Is physically able to put on a Personal Flotation Device (PFD) without assistance from another individual
16. Has no physical limitations that would hinder or prevent the performance of duties

Section VII(a) - Verifying Medical Practitioner Recommendation

Competent	Not Competent (explain in comments)	Needing Further Review (explain in comments)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: 		

Comment [DAD12]: Both MERPAC & TSAC want to review this block further at their respective Spring 2008 meetings.

Section VII(b)- Certification (to be signed by verifying medical practitioner)

I hereby certify that the general medical history, physical examination and vision test, as well as the hearing and physical demonstration of competence as appropriate, have been performed, witnessed or reviewed to my satisfaction.

To the extent that there are any physical or medical conditions that may preclude the applicant from performing his/her duties, all relevant information has been reported on this form (and any attached sheets) to the best of my knowledge.

My signature below attests, subject to criminal prosecution under 18 USC 1001, that all information reported by me is true and correct to the best of my knowledge, and that I have not knowingly omitted to report any material information relevant to the form.

Signature:	Date:	National Provider Identifier:
Name:	Phone:	Fax:
Street:	City:	State:
Zip:	Email:	

Comment [DAD13]: Leave room for a stamp b/c most doctors stamp this information now.

Section VIII - Applicant Certification (to be signed by applicant)

My signature below attests, subject to prosecution under 18 USC 1001, that all information that I have reported is true and correct to the best of my knowledge, and that I have not knowingly omitted to report any material information relevant to this form.

Name (Printed):	Signature:	Date:
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Comment [t14]: 08 April 08 - MERPAC recommends adding a block for the mariner to tell the CG how he/she wants to be contacted (consistent w/ HIPPA requirements), e.g. e-mail, letter, fax, phone or any combination. If release is executed, mariner can direct NMC to contact doctor directly.

Section IX - Release (to be signed by applicant and verifying medical practitioner)

I hereby authorize the verifying medical practitioner provider, who has signed the certification on page X of this form, to release to, or discuss with authorized Coast Guard personnel, any pertinent information in

Dept. of Homeland Security United States Coast Guard CG-719K (Draft)	Coast Guard Maritime Credential Medical Evaluation Report	OMB-0000-0000 Page 9
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his/her possession regarding any physical or medical condition that may require review by the Coast Guard prior to determining whether the Coast Guard should issue a credential(s) for maritime service. I understand that this authorization is voluntary. I also understand that failure to provide authorization could affect the Coast Guard's ability to make a timely determination as to whether the Coast Guard should issue me a credential(s) for maritime service. This authorization will remain in effect until the Coast Guard determines whether to issue me the requested credential(s) for maritime service, but no longer than one year.

I have read and understand the following statement about my rights:

- I may revoke this authorization at any time prior to its expiration date by notifying the verifying medical practitioner in writing, but the revocation will not have any effect on any actions taken before they received the notification.
- Upon request, I may see or copy the information described in this release.
- I am not required to sign this release to receive my medical evaluation.

Applicant:

Name (Printed):	Signature:	Date:
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Verifying Medical Practitioner:

Name (Printed):	Signature:	Date:
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Comment [DAD15]: WG recommends that CG compare this text w/ the Kirby release provided by Roy Murphy (which has been vetted by Kirby legal). WG primary concern is that they want the mariner's doctor to be able to speak directly w/ CG.

Comment [DAD16]: Legal needs to review this. Is it the VMP, or just a witness, or do we need it at all?